

State of South Dakota

SEVENTY-SECOND SESSION
LEGISLATIVE ASSEMBLY, 1997

529A0546

HOUSE BILL NO. 1087

Introduced by: Representatives Hunt, Belatti, Brown (Jarvis), Chicoine, Crisp, DeMersseman, Diedrich, Duenwald, Fischer-Clemens, Fitzgerald, Gabriel, Gleason, Hagg, Hassard, Jaspers, Kazmerzak, Koetzle, Koskan, Kredit, Lucas, Madden, Matthews, McNenny, Monroe, Moore, Pederson (Gordon), Putnam, Rost, Schrempp, Smidt, Van Gerpen, Waltman, Weber, Wetz, and Wick and Senators Dunn (Rebecca), Aker, Benson, Drake, Frederick, Hainje, Halverson, Hunhoff, Hutmacher, Johnson (William), Kleven, Kloucek, Lange, Lawler, Reedy, Rounds, Staggers, Symens, and Vitter

1 FOR AN ACT ENTITLED, An Act to revise certain statutes pertaining to abortions.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That subdivision (3) of § 34-23A-1 be amended to read as follows:

4 (3) "Parent," ~~one parent of the pregnant minor or the guardian or conservator of the~~
5 ~~pregnant female~~ both parents of the pregnant female if they are both living, one parent
6 of the pregnant female if only one is living or if the second one cannot be located
7 through reasonably diligent effort, or the guardian or conservator if the pregnant
8 female has one;

9 Section 2. That § 34-23A-7 be amended to read as follows:

10 34-23A-7. No abortion may be performed upon an unemancipated minor or upon a female
11 for whom a guardian has been appointed because of a finding of incompetency, until at least
12 forty-eight hours after written notice of the pending operation has been delivered in the manner

specified in this section. The notice shall be addressed to the parent at the usual place of abode of the parent and delivered personally to the parent by the physician or an agent. In lieu of such delivery, notice may be made by certified mail addressed to the parent at the usual place of abode of the parent with return receipt requested and restricted delivery to the addressee, which means a postal employee can only deliver the mail to the authorized addressee. If notice is made by certified mail, the time of delivery shall be deemed to occur at twelve o'clock noon on the next day on which regular mail delivery takes place, subsequent to mailing.

No notice is required under this section if:

(1) The attending physician certifies in the pregnant minor's medical record that, on the basis of the physician's good faith clinical judgment, a medical emergency exists that so complicates the medical condition of a pregnant female as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial and irreversible impairment of a major bodily function and there is insufficient time to provide the required notice; or

(2) The person who is entitled to notice certifies in writing that he has been notified; or

~~(3) The pregnant minor declares, or provides information that indicates, that she is an abused or neglected child as defined in § 26-8A-2 and the attending physician has reported the alleged or suspected abuse or neglect as required in accordance with §§ 26-8A-3, 26-8A-6, and 26-8A-8. In such circumstances, the department of social services, the state's attorney and law enforcement officers to whom the report is made or referred for investigation or litigation shall maintain the confidentiality of the fact that she has sought or obtained an abortion and shall take all necessary steps to ensure that this information is not revealed to her parents~~ A pregnant female elects not to allow the notification of her parent or guardian or conservator, any judge of a court of competent jurisdiction shall, upon petition, or motion, and after an appropriate

1 hearing, authorize a physician to perform the abortion if the judge determines that the
2 pregnant female is mature and capable of giving informed consent to the proposed
3 abortion. If the judge determines that the pregnant female is not mature, or if the
4 pregnant female does not claim to be mature, the judge shall determine whether the
5 performance of an abortion upon her without notification of her parent, guardian, or
6 conservator would be in her best interests and shall authorize a physician to perform
7 the abortion without such notification if the judge concludes that the pregnant female's
8 best interests would be served thereby.

9 Section 3. That chapter 34-23A be amended by adding thereto a NEW SECTION to read
10 as follows:

11 In any proceeding pursuant to subdivision 34-23A-7(3), the pregnant female may participate
12 in proceedings in the court on her own behalf, and the court may appoint a guardian ad litem for
13 her. The court shall, however, advise her that she has a right to court-appointed counsel and
14 shall, upon her request, provide her with such counsel. Proceedings in the court under this
15 subdivision shall be confidential and shall be given such precedence over other pending matters
16 so that the court may reach a decision promptly and without delay so as to serve the best
17 interests of the pregnant female. A judge of the court who conducts proceedings under this
18 subdivision shall make in writing specific factual findings and legal conclusions supporting the
19 decision and shall order a record of the evidence to be maintained including the judge's own
20 findings and conclusions.

21 An expedited confidential appeal shall be available to any such pregnant female for whom the
22 court denies an order authorizing an abortion without notification. An order authorizing an
23 abortion without notification is not subject to appeal. No filing fees are required of any such
24 pregnant female at either the trial or the appellate level. Access to the trial court for the purposes
25 of such a petition or motion, and access to the appellate courts for purposes of making an appeal

1 from denial of the same, shall be afforded such a pregnant woman twenty-four hours a day, seven
2 days a week.

3 Section 4. That § 34-23A-10.2 be amended to read as follows:

4 34-23A-10.2. A physician who, knowingly or in reckless disregard, violates § 34-23A-2.1,
5 34-23A-7, or 34-23A-10.1 is guilty of a Class 2 misdemeanor. The court in which a conviction
6 of a violation of § 34-23A-2.1, 34-23A-7, or 34-23A-10.1 or occurs shall report such conviction
7 to the board of medical and osteopathic examiners.

8 No penalty may be assessed against the female upon whom the abortion is performed or
9 attempted to be performed. No criminal penalty or civil liability for failure to comply with
10 subsection 34-23A-10.1(2)(c) or that portion of subsection 34-23A-10.1(3) requiring a written
11 certification that the woman has been informed of her opportunity to review the information
12 referred to in subsection 34-23A-10.1(2)(c) may be assessed unless the department of health has
13 made the printed materials available at the time the physician or ~~his~~ the physician's agent is
14 required to inform the female of her right to review them.

15 Section 5. That § 34-23A-22 be amended to read as follows:

16 34-23A-22. If any ~~abortion occurs which is not in compliance with~~ person performs an
17 abortion willfully, wantonly, or maliciously in disregard to § 34-23A-2.1, 34-23A-7, or
18 34-23A-10.1, the person upon whom such an abortion has been performed, and the parent of a
19 minor child upon whom such an abortion was performed, or any of them, may maintain an action
20 against the person who performed the abortion ~~for~~ not to exceed ten thousand dollars in punitive
21 ~~damages and treble whatever actual damages the plaintiff may have sustained.~~ Any person upon
22 whom such an abortion has been attempted may maintain an action against the person who
23 attempted to perform the abortion ~~for~~ not to exceed five thousand dollars in punitive damages
24 ~~and treble whatever actual damages the plaintiff may have sustained.~~

25 If judgment is rendered in favor of the plaintiff in any such action, the court shall also render

1 judgment for a reasonable attorney's fee in favor of the plaintiff against the defendant. If
2 judgment is rendered in favor of the defendant and the court finds that the plaintiff's suit was
3 frivolous and brought in bad faith, the court shall also render judgment for a reasonable
4 attorney's fee in favor of the defendant against the plaintiff.